

**§ 201.614 Administration of plan of disgorgement.**

(a) *Appointment and removal of administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement and to delegate to that person responsibility for administering the plan. A respondent may be required or permitted to administer or assist in administering a plan of disgorgement, subject to such terms and conditions as the Commission or the hearing officer deem appropriate to ensure the proper distribution of funds. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed by 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(c) *Administrator's fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, he or she may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(d) *Source of funds.* Unless otherwise ordered, fees and other expenses of administering the plan of disgorgement shall be paid first from the interest earned on disgorged funds, and if the interest is not sufficient, then from the corpus.

(e) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the

administrator and cancellation of the administrator's bond, if any.

(f) *Amendment.* A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion.

**§ 201.620 Right to challenge order of disgorgement.**

Other than in connection with the opportunity to submit comments as provided in § 201.612, no person shall be granted leave to intervene or to participate in a proceeding or otherwise to appear to challenge an order of disgorgement; or an order approving, approving with modifications, or disapproving a plan of disgorgement; or any determination relating to a plan of disgorgement based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

**§ 201.630 Inability to pay disgorgement, interest or penalties.**

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial disclosure statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer